UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

Peggy Lynn Torpey,

Debtor.
_____/

Case No.: 18-50471
Chapter 7
Hon. Mark A. Randon

Timothy J. Miller,

Plaintiff,

v.

Adversary Proceeding
Case No.: 18-04577

Philip Sandell,

Defendant.
_____/

POST-REMAND FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. INTRODUCTION

This matter is before this Court on remand from the United States District Court for the Eastern District of Michigan. Chapter 7 Trustee, Timothy Miller, seeks to recover an alleged preference payment from Mr. Philip Sandell, a 72-year-old Vietnam War veteran. Mr. Sandell loaned money to his girlfriend, Peggy Lynn Torpey, after she became medically disabled and lost her job. She paid him back in two installments, both of which occurred more than 90 days but less than a year before unanticipated circumstances drove her to file Chapter 7 bankruptcy.

Mr. Sandell's counsel stipulates to all of the elements of a preference action, except one: whether Mr. Sandell is a non-statutory insider.[1] The preference period is 90 days before the bankruptcy filing for typical creditors but one year for listed statutory insiders, and non-statutory insiders. Non-statutory insider status is a judicially-created expansion of the list, which the United States Supreme Court has recognized is subject to several, nonuniform, and sometimes questionable, tests.

At the end of the trial, this Court placed its findings of fact and conclusions of law on the record. Given the absence of Sixth Circuit precedent, this Court adopted the first of two discrete tests suggested by Justice Sotomayor and joined by Justices Kennedy, Thomas, and Gorsuch in the *Village at Lakeridge* concurrence. It determined that Mr. Sandell was *not* a non-statutory insider because his relationship with Ms. Torpey was not comparable to a marriage–without making findings on whether the transaction was arm's length. The Court entered judgment in Mr. Sandell's favor. The Trustee appealed.

On appeal, the district court determined that this Court may have read the Supreme Court's concurrence "as putting forth two optional and self-contained 'tests,' rather than offering an overall framework for a 'principled method of determining' whether a creditor qualifies as a non-statutory insider." And this reading "led the court to end its analysis after it found Torpey's and Sandell's romantic relationship did not have the attributes of a marriage." Finding this Court's analysis "truncated" and error, the district

[1]He does not fit within any statutory insider relationship. 11 U.S.C. § 101(31)(A).

court vacated the judgment and remanded for additional findings, related to: (1) the existence of other comparable familial relationships (i.e., brother-sister ("sibship")); and (2) whether the loan was an arms-length transaction.

This Court, respectfully, stands by its reading of the *Village at Lakeridge* concurrence.[2] However, it nevertheless follows the district court's reading and makes the

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[2]The words of Justice Sotomayor are available for examination: "I briefly walk through how I might apply *my two proposed tests* to the facts of this case." *U.S. Bank Nat'l Ass'n ex rel. CWCapital Asset Mgmt. LLC v. Vill. at Lakeridge, LLC*, 138 S. Ct. 960, 972 (2018) (emphasis added). This Court's reading also has support among academicians and bankruptcy law practitioners alike. *See e.g.,* Joseph L. Schwartz, Tara J. Schellhorn & Michael Trentin, *A Look Inside "Insider" Status: An Argument for a Multi-Factor Test to Identify "Non-Statutory Insiders*, Vol. 27 No. 6 NORTON JOURNAL OF BANKRUPTCY LAW AND PRACTICE, Dec. 2018:

> First Justice Sotomayor suggested eliminating the arm's length prong and instead, focusing *solely* on a comparison between the characteristics of the alleged non-statutory insider and the statutory insider to determine whether they are sufficiently similar. *Alternatively*, Justice Sotomayor suggested utilizing a test that focuses "on a broader comparison that includes consideration of the circumstances surrounding any relevant transaction" along with other factors to determine insider status.

(Emphasis added);
Bruce A. Markel, *The Dogs That Didn't Bark: FTI, Lakeside and Unaddressed Questions*, 38 No. 6 BANKRUPTCY LAW LETTER NL 1, June 2018 (same reading); John Baxter, *Who is A Non-Statutory Insider? The U.S. Supreme Court Provides (Some) Guidance on the Appropriate Standard of Review for this Question in Lakeridge*, Mar. 6, 2018:

> Instead, Justice Sotomayor recommended two alternatives to the Ninth-Circuit test: (1) remove the "arm's length" transaction element altogether; or (2) have the analysis of the "arm's length" nature of the transaction be a factor in determining whether the party is an insider without making such analysis dispositive.

additional findings on remand, as directed.

Considering the record, relevant case law, and after careful consideration of the district court's opinion and remand directives, this Court reaches the same conclusion: Mr. Sandell is not a non-statutory insider. A preference cannot be established, and this Court will enter judgment in Mr. Sandell's favor.

II. FINDINGS OF FACT

Mr. Sandell and Ms. Torpey were the only trial witnesses. This Court closely observed their demeanor while they testified. Both were credible. This Court, therefore, makes these factual findings:

Mr. Sandell is a 72-year-old United States Navy and Vietnam War veteran (Tr. 34). He has been married three times: he filed for divorce twice and lost his third wife, and mother of his only child, to brain cancer (Tr. 36). He knows what marriage is and has no desire or intention to remarry–He's done with marriage (Tr. 36).[3] He enjoys being single (Tr. 36). But he does desire companionship, friendship, and physical intimacy. He's found that in his 56-year-old girlfriend of eight years, Ms. Torpey (Tr. 21, 23). She too is a veteran who spent more than 24 years with the United States National Guard,

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Available at https://www.nelsonmullins.com/idea_exchange/blogs/the_bankruptcy_protector/case_overviews (last visited May 10, 2020).

[3] A. No. She does not live with me, no . . . . I'm single, I don't intend on getting married. I don't want to be married.

(Tr. 35-36).

Army, and Air Force (Tr. 72, 105). As veterans, they share a common bond and a level of trust that perhaps only those who have served in the military can truly appreciate.[4] They enjoy spending time together: sharing meals two or three times a week, drinking coffee, or just watching television together (Tr. 46, 68). At the time of the hearing, he was spending, on average, every other night at her place.[5] But, importantly, his overnight stays were less frequent at the time of the loans and repayment (Tr. 50, 68-69).[6] She has not spent the night at his place in four or five years (Tr. 68). They spend some holidays

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[4]Mr. Sandell testified he feels the most comfortable around other veterans whom he trusts (Tr. 46-47).

[5]He describes the situation as "bouncing between" his and her place–an untenable situation if he were in a marriage or similar arrangement (Tr. 50).

[6]The questioning by Trustee's counsel focused on overnight visits at the time of the hearing–*not* at the time of the loan or repayment:

> Q. *Do* you spend the night almost every day of the week?
> A. No, not every day of the week.
> Q. How many days of the week would you say?
> A. I don't know, four, three, four. Four days, five.

(Tr. 50) (emphasis added). But as Ms. Torpey explained, overnight visits were historically not as frequent:

> Q. And *does* he spend the night at your home?
> A. Yes he does.
> Q. And how often *is* that?
> A. *Recently or are we going back*?
> He does more so now . . . I fell again recently, and I don't feel secure at night . . . *Now last year or the year before he didn't as often*.

(Tr. 68-69) (emphasis added).

together and occasionally attend each other's family gatherings (Tr. 50-51, 67).[7] Her medical condition prevents her from driving (Tr. 26); he lost 50 percent of his hearing because of the "guns in Vietnam" (Tr. 53-54). So he drives her to important appointments and meetings (Tr. 46-47, 66); she accompanies him to certain doctor visits (Tr. 47). The relationship works. But they have never held themselves as a married couple or family.

Though in a romantic relationship, Mr. Sandell and Ms. Torpey have led separate financial lives. They have never lived together under one roof–they have always maintained separate households and finances. She is not on his bank accounts or credit cards; he is not on hers (Tr. 58-59, 118).[8] They pay their own bills and do not share expenses. They have no joint investments, accounts, or property–with the sole exception of her car loan, for which he co-signed (Tr. 44, 113, 118).[9] Ms. Torpey will receive nothing when Mr. Sandell dies–everything will go to his son (Tr. 35-36). They are two financially independent individuals, neither of whom controls the other's finances (Tr. 62, 113, 118). They do not even give each other financial advice (Tr. 60-61). Indeed, until the unfortunate series of events described below, Ms. Torpey had never borrowed money

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[7]They have no children in common.

[8]On rare occasions, she had access to his bank account–primarily to help him pay his bills (because he's not good with computers)–but only in his presence, with his permission, and at his direction (Tr. 25-26, 58-59).

[9]Ms. Torpey makes all of the car payments and pays the auto insurance (Tr. 45).

from Mr. Sandell (Tr. 111).

Ms. Torpey suffered an on-the-job injury, which resulted in her being declared disabled and discharged from National Guard duty (Tr. 110, 117). As a result, she was without income for a year and two weeks, while she awaited her retroactive retirement payment (Tr. 110). This caused her to fall behind on her bills. Distraught and facing foreclosure of her home, utility shut-offs, mounting bills, and, eventually, with no money to even buy groceries, she reluctantly turned to Mr. Sandell (Tr. 55, 72-73, 77, 102-104, 111). He agreed to loan her money in her time of need (Tr. 34); she promised to repay him, once she received her retroactive retirement check (Tr. 29, 56, 59, 103).

The loan was not formalized.[10] Mr. Sandell had Ms. Torpey's handshake; her word was enough (Tr. 34, 41-42). He never doubted that Ms. Torpey would repay him as soon as she received her lump sum–interest was unnecessary (Tr. 41-42). He also paid for her groceries, utilities, and mortgage payments during this time (Tr. 30-31). She made notes and kept track of all the money she borrowed in a book (Tr. 42, 87-88, 98, 103). She says his financial help saved her life: her financial challenges had left her feeling helpless, depressed, and contemplating the worst (Tr. 72-73, 102, 115, 118-119); he says he would have done the same for another friend he trusted (Tr. 40).

True to her word, when she received her retroactive payment, Ms. Torpey paid Mr.

[10]It was not a lump-sum loan but rather a series of loans provided, as needed, during her time of need. She kept track of each loan (Tr. 42, 98, 103).

Sandell back (Tr. 42, 119).[11] Although there is some disagreement as to whether it was repayment in full, both agree "she[] pretty well paid up" (Tr. 43, 105). At the time of repayment, she did not intend to file bankruptcy (Tr. 69, 71). Instead, the bankruptcy filing was precipitated by a "skyrocketing" Military Star credit card bill, which became unmanageable several months *after* she repaid Mr. Sandell (Tr. 118-120). There was no plan to give Mr. Sandell an advantage over her other creditors: the timing was coincidental.[12] Nor does it appear that Ms. Torpey advised Mr. Sandell of her bankruptcy *before* it was filed (Tr. 61-62, 71-72).

III. ADDITIONAL FINDINGS OF FACT AND CONCLUSIONS OF LAW

As the district court noted, case law on the standard to be used in determining non-statutory insider status is sparse. The standard has not been fully developed, and, to date, the Sixth Circuit has provided no guidance. The Bankruptcy Code does not define a non-

[11]Ms. Torpey actually made a payment to Mr. Sandell before she received her retroactive payment. She cashed out her Thrift Savings Plan ("TSP") (Tr. 92-93). At that time, Mr. Sandell was "short of funds" (Tr. 93). She received $9,307.00 on February 26, 2018, and immediately repaid $8,307.00 (Tr. 94). *Significantly*, had she not cashed out her TSP to pay Mr. Sandell, it would have been protected from distribution to her creditors in bankruptcy. 11 U.S.C. § 541(c)(2) (ERISA-qualified plans include a restriction on alienation and are excluded from the bankruptcy estate). She received her retroactive pay approximately six weeks later, on April 17, 2018, and immediately repaid Mr. Sandell an additional $15,002.00 (Tr. 95). She filed Chapter 7 bankruptcy on July 28, 2018–152 days after her first payment and 102 days after her second.

[12]Ms. Torpey tried hard to make payment arrangements, but interest had caused the debt to double (Tr. 71, 104). Bankruptcy was her last resort after the credit card company suggested it would garnish her pension once she received it–unless she paid her balance in full (Tr.119-120).

statutory insider; it does, however, define an "insider" as including, if the debtor is an individual, a "relative of the debtor[.]" 11 U.S.C. § 101(31)(A)(I). "Relative" is, in turn, defined as an "individual related by affinity or consanguinity within the third degree as determined by the common law, or individual in step or adoptive relationship within such third degree." 11 U.S.C. § 101(45). This has led courts to develop varying tests to determine what constitutes a non-statutory insider, because it is widely accepted that "includes" supposes other insider relationships may be found outside of the statutory list. The district court discussed some the different constructs; they do not bear repeating in detail.[13] Of importance here, the United States Supreme Court in *U.S. Bank Nat'l Ass'n ex rel. CWCapital Asset Mgmt. LLC v. Vill. at Lakeridge, LLC*, 138 S. Ct. 960 (2018) recently determined the standard of appellate review of non-statutory insider determinations, and in so doing, four concurring justices (Sotomayor, Kennedy, Thomas, and Gorsuch) weighed in on two possible tests for determining non-statutory insider status "that are consistent with the understanding that insider status inherently presumes that transactions *are not conducted at arm's length*." *Vill. at Lakeridge, LLC*, 138 S. Ct. at 971 (emphasis added). According to Justice Sotomayor, the first test–which this Court again adopts:

> should focus solely on a comparison between the characteristics of the

[13]For example, the Fourth Circuit uses a "control" approach; the Third, Ninth, and Tenth Circuits use a "closeness" approach; and the Seventh Circuit uses a "comparability or similarity" approach. As they say in the neighborhood, "it's a hot mess!"

> alleged non-statutory insider and the enumerated insiders, and if they share sufficient commonalities, the alleged person or entity should be deemed an insider regardless of the apparent arm's-length nature of any transaction.

Id.[14] The first time around, this Court found the relationship was not comparable to a marriage:

> So the Court would find these additional facts: that the parties did not and have not lived together; the parties do not jointly own property with the exception that Defendant cosigned for Debtor's vehicle; they have no joint investments or debts; they have no children in common; the loans issued were not frequent throughout the relationship but episodic and in response to Debtor's particularized desperate need for finances in an unfortunate financial period of her life; the Defendant doesn't take care of the Debtor on an ongoing [] [basis] or pay her bills and historically they pay their own bills.
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> * * *
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> This relationship is far closer to a typical close dating relationship than the financial entanglements and joint financial ownership and joint living arrangements and singularity of financial goals that characterize most marriages. Debtor does not control Defendant's finances and vice versa, and the Court does find that the lacking of control is one of many factors that the Court should consider.

(Tr. 131-132). And, without examining whether or not the transaction was also arm's length, this Court found in favor of Mr. Sandell.[15] *See e.g., In re Longview Aluminum,*

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[14]The *second* test "focus[es] on a broader comparison that *includes* consideration of the circumstances surrounding any relevant transaction." *Vill. at Lakeridge, LLC*, 138 S. Ct. at 971-72 (emphasis added). These are separate conceptions. *Id*. at 972. The district court, as the appellate court, is free to choose from the two tests (also referred to as standards), but the concurrence suggests each could stand alone.

[15]The Trustee did not ask this Court to consider a comparison to other possible familial relationships besides marriage. It appears, instead, the issue was first raised on appeal.

L.L.C., 657 F.3d 507, 510-511 (7th Cir. 2011) (considering only whether a manager of a debtor corporation was comparable to the enumerated insiders, regardless of whether any transaction was conducted at less-than-arm's length); *Freund v. Heath (In re McIver)*, 177 B.R. 366, 369 (Bankr. N.D. Fla. 1995) ("the specifics of a transfer . . . [are] irrelevant to whether or not the transferee is an insider"); *Harpley v. Kostakis (In re Reilly)*, No. 06-00112, 2007 WL 4731020, at *3 (M.D. Fla. Mar. 27, 2007) ("Facts regarding the personal relationship between the debtor and the creditor are critical to the issue of insider status."). The district court found this analysis was error, because this Court failed to consider whether the relationship was comparable to a "sibship," and whether the loan transaction was arm's length.

Because the district court vacated the judgment, this Court must make new findings. This Court again finds the relationship is not comparable to a marriage and makes the additional findings, as directed, below.

A. The Relationship is not Comparable to a Marriage

There is no per se rule that a boyfriend or girlfriend is a non-statutory insider. *Inghram v. Hays (In re Witt)*, No. 07-7017, 2008 WL 514999, at *4 (Bankr. C.D. Ill. Feb. 25, 2008); *Thrush v. Marvin (In re Hollar)*, 100 B.R. 892, 893 (Bankr. N.D. Ohio 1989) (being the girlfriend and future fiancee of the debtor is insufficient, without more, to make the defendant an insider). More is required to find comparability to marriage.

Cohabitation is an important factor.[16] Other factors include financial interdependence, control, multiple loans over the course of the relationship, shared expenses, financial support over the course of the relationship, and whether the couple holds themselves out as engaged or married even though they are not. *See e.g., U.S. Bank Nat'l Ass'n ex rel. CWCapital Asset Mgmt. LLC v. Vill. at Lakeridge, LLC*, 2013 WL 1397447, at *2 (B.A.P. 9th Cir. Apr. 5, 2013) *aff'd*, 814 F.3d 993 *aff'd*, 138 S. Ct. 960 (citing the bankruptcy court's finding that assignee was *not* a non-statutory insider because, for all his dating with his girlfriend: he does not "cohabit" with her, does not pay her bills or living expenses, and they have never purchased expensive gifts for each other); *Wiswall v. Tanner (In re Tanner)*, 145 B.R. 672, 678 (Bankr. W.D. Wash. 1992) (non-statutory insider relationship found where there was cohabitation until shortly before the transfer, a romantic relationship, and couple intended to "approximate a marital situation"); *Gennet v. Docktor (In re Levy)*, 185 B.R. 378 (Bankr. S.D. Fla. 1995) (girlfriend was an insider

[16]Overnight visits–while maintaining separate residences–are not the same as cohabitation. Colloquially, cohabitation means living under a single roof; living together as if married, as contrasted with a sojourn. Maintaining separate residences and household expenses is inconsistent with cohabitation. Merriam-Webster Dictionary online provides this illustrative example of the use of "cohabitate" in a sentence: "Pairs who cohabitate without marrying report even higher levels of happiness and self-esteem than do those who wed before shacking up." MERRIAM-WEBSTER, definition of cohabitate, https://www.merriam-webster.com/dictionary/cohabitat (last visited May 7, 2020). Your Dictionary defines "cohabitation" as: "1. An emotional and physical intimate relationship which includes a *common* living place . . . 2. The act of living together. 3. A place where two or more individuals reside together." YOUR DICTIONARY, definition of cohabitation, https://www.yourdictionary.com/cohabitation (last visited May 7, 2020) (emphasis added). Mr. Sandell and Ms. Torpey did *not* cohabitate.

where debtor lived with her for five years, knew her for more than 16 years, the two shared living expenses, multiple loans were made, and she relied on him for financial support); *United States v. Boyd*, No. 08-1256, 2010 WL 3463446 (D. Minn. Aug. 30, 2010) (non-statutory insider relationship found where there was cohabitation in an eight-year romantic relationship; transferee referred to debtor as his wife or fiancee in public settings; and transferee provided debtor with financial support); *Walsh v. Dutil (In re Demko)*, 264 B.R. 404, 408 (Bankr. W.D.Pa. 2001) (cohabitation for four years and authority to write checks on each other's account may render an individual a [non-statutory] insider); *In re McIver*, 177 B.R. 366 (live-in girlfriend may be non-statutory insider); *Moran v. Pardo (In re Life Partners Holdings, Inc*.), No. 4:15-cv-905-O, 2017 WL 11517990 (N.D. Tx. Dec. 29, 2017) (non-statutory insider relationship found where relationship was akin to common-law marriage); *Matson v. Strickland (In re Strickland)*, 230 B.R. 276 (Bankr. E.D. Va. 1999) (absence of: cohabitation, multiple loans, debtor holding out transferee to be his relative, or transferee control over debtor are factors in finding no non-statutory insider relationship); *Rainsdon v. Farson (In re Farson)*, 387 B.R. 784, 792-793 (Bankr. D. Idaho 2008) (romantic relationship with cohabitation not necessarily sufficient); *Yoppolo v. Lindecamp (In re Fox)*, 277 B.R. 740, 745 (Bankr. N.D Ohio 2002) (the essential question "is the degree to which the transferee is able to exert a significant amount of control or influence over the debtor").

As described in the above findings of fact, Mr. Sandell's relationship with Ms.

Torpey is not comparable to a marriage.

B. The Relationship is not Comparable to a Sibship or Other Familial Relationship

The types of possible relationships that exist between siblings span a vast continuum. Still, excluding familial or biological considerations, what are the core features of a sibling relationship? Brainstorming leads this Court to these common connections: (1) being raised in the same household; (2) a relationship that begins in childhood; (3) a longstanding, joint connection to a common group of people; (4) a shared history related to places and things; (5) an intimate knowledge of each other from a historical perspective; (6) a shared concern for common elders; (7) a past or current competitiveness or rivalry; (8) an anticipated inheritance from a common source; (9) a willingness to share resources or advice; (10) public declaration or acknowledgment of sibling relationship; and (11) absence of a sexual or romantic relationship.

At best, only (9) applies to Mr. Sandell's relationship with Ms. Torpey. The Court finds no record evidence to support comparison to a sibship–or any other familial relationship. *Gordon v. Vongsamphanh (In re Phonsavath*), 328 B.R. 895, 898 (Bankr. N.D. Ga. 2005) ("a relationship properly gives rise to an insider status only if the *de facto* family relationship is as close as the *de jure* relationship specified by the definition of 'relative' in § 101(45), that is, an individual related by consanguinity or affinity within the third degree"). Mr. Sandell and Ms. Torpey have never held themselves out as family. *Loftis v. Minar (In re Montanino)*, 15 B.R. 307, 310 (Bankr. D.N.J. 1981) (insider

relationship found where creditors were parents of debtor's live-in girlfriend of five years and the debtor held them out to be relatives in a real estate deed); *Matson v. Strickland (In re Strickland)*, 230 B.R. 276, 286 (Bankr. E.D.Va. 1999) (debtor did not hold transferee out to be his relative).

To be sure, the analysis could have ended at "absence of a sexual or romantic relationship" as theirs was not platonic, a critical difference. However, consideration of the other possible sibling-relationship features does not alter the analysis. This Court has not uncovered a single case where a romantic, sexual relationship was compared to a sibship for purposes of non-statutory insider status. Mr. Sandell and Ms. Torpey's relationship is not comparable to a sibship.

C. The Nature of the Loan Transaction

As directed, this Court also makes additional findings on the nature of the loan transaction. Mr. Sandell relied on his eight-year relationship with Ms. Torpey in making the loan. He knew she was in the military and her word was her bond. Military training ingrains as much in its enlistees, as life and death in war often depends on trusting–without question–the word of a fellow soldier. He knew, though in her moment of need she lacked financial resources, she would have the ability to repay him. The two agreed on an fixed repayment date (i.e., when the retroactive payment was received).

That fact that the loan was neither in writing, nor called for interest is also of less importance given the facts of this case: With all due respect to Mr. Sandell, the record is

replete with evidence that he is a simple man, from a bygone era. His world view is framed by his military experience and harks back to a time when your word was your bond; when complex deals were cemented by a handshake–when trust was not placed in reams of paper but in the integrity and reputation of the person making the promise. Mr. Sandell testified that but for the fact that he knew Ms. Torpey was to receive a lump-sum payment and his trust in her word, he would not have made the loan. There was an expressed expectation of repayment and a promise to repay–to which end Ms. Torpey kept track of all amounts borrowed. But notwithstanding their relationship, Mr. Sandell lacked control over Ms. Torpey: he could not compel repayment.

This Court now grapples with the role that the loan transaction should play in determining whether Mr. Sandell is a non-statutory insider. *Vill. at Lakeridge, LLC*, 138 S. Ct. at 973 (Sotomayor, J., concurring) ("This is all to say that I hope that courts will continue to grapple with the role that an arm's length inquiry should play in a determination of insider status."). The loan, admittedly, did not have all of the indicia of an arms-length transaction. Loans between friends or lovers rarely do.[17] However, its terms were sufficiently defined and the obligation to repay was unequivocal, such that given the *absence* of *any* comparable familial relationship, this Court still finds that Mr.

[17]"[F]riends can rarely be said to conduct transactions at arm's length [but] . . . the mere existence of a friendship will not result in the creation of an 'insider' relationship." *In re Fox*, 277 B.R. at 745.

Sandell is not a non-statutory insider.[18]

Last, this Court fully incorporates, by reference, the entirety of its post-trial findings of fact and conclusions of law placed on the record.

IV. CONCLUSION

Following the district court's instructions on remand, this Court makes the required additional findings and concludes Mr. Sandell is still not a non-statutory insider. Judgment will enter in favor of Mr. Sandell.

Signed on May 11, 2020

/s/ Mark A. Randon
Mark A. Randon
United States Bankruptcy Judge

[18]Here, it seems appropriate to revisit the United States Supreme Court's guidance. *Vill. at Lakeridge, LLC*, 138 S. Ct. at 970. The four concurring justices were concerned that the Ninth Circuit's two-prong conjunctive test would foreclose a finding of non-statutory insider status because of an arms-length transaction *only*. Foreclosing non-statutory insider status by examining only the nature of the transaction is not faithful to the statute–which determines insider status based on designated relationships. However, foreclosing non-statutory insider status based only on an examination of the comparability to an existing statutory relationship is appropriate. *See e.g., In re Longview Aluminum, L.L.C*, 657 F.3d at 510-11. This is because conferring non-statutory insider status based on comparability to an existing statutory relationship *is* faithful to the statute. By way of illustration, a loan between two casual friends does not give rise to an insider relationship–even if the transaction is undisputedly *not* arm's length. But an arms-length transaction between a married couple always gives rise to an insider relationship. The critical focus is the relationship. This, of course, is not to take issue with the district court's ruling, which this Court follows. Rather, it is to explain why this Court still does not find a non-statutory insider relationship, even though the transaction was not perfectly arm's length. Stated simply, accepting the district court's reading, this Court finds that the nature of the transaction was imbued with sufficient formality that the absence of a comparable statutory relationship cannot be overcome.